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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on September 6, 2001, at the Holiday Inn Express Hotel & Suites, in the Panion A Room, 1350 North Fourth Street, San Jose, California.

2. **ROLL CALL**

Tom Flesh, President of the Board, called the General meeting to order at 8:53 a.m.

Present:	Wendy Brogin	Tom Novi
	Robert T. (Tom) Flesh	Executive Director
	Frederick E. (Fritz) Hitchcock	Robin P. Parker
	Alan J. Skobin	Staff Counsel
	Solon C. Soteras	Polly Rowsey
	Glenn E. Stevens	Graduate Legal Assistant
Absent:	Edward Bayuk	
	David W. Wilson	

3. **APPROVAL OF THE MINUTES FROM THE JUNE 12, 2001, GENERAL AND SPECIAL MEETINGS, AND THE JUNE 26, 2001, SPECIAL MEETING**

Mr. Stevens noted that the word "judgment" was misspelled and requested that the minutes be corrected. Mr. Stevens moved to adopt the June 12, 2001, General Board meeting minutes, as amended. Mrs. Brogin seconded the motion. Mr. Hitchcock abstained from voting because he was not present at the June 12, 2001, General meeting. The motion carried unanimously.

Mr. Stevens moved to adopt the June 12, 2001, Special Board meeting minutes. Mrs. Brogin seconded the motion. Mr. Hitchcock abstained from voting because he was not present at the June 12, 2001, Special meeting. The motion carried unanimously.

Mr. Skobin requested that the word "renumber" on page 4 of the minutes be changed to

“reorganized.” Mr. Skobin moved to adopt the June 26, 2001, Special Board meeting minutes, as amended. Mr. Soteras seconded the motion. The motion carried unanimously.

4. **PRESENTATION OF RESOLUTION TO JOSEPH D. PUTNAM, FORMER DEALER MEMBER**

Mr. Flesh presented a Resolution and Sculpture to Joseph D. Putnam, former Dealer Member, in appreciation for his dedication and service to the Board.

5. **STATUS REPORT CONCERNING MANUFACTURER AND DISTRIBUTOR COMPLIANCE WITH THE BOARD’S REQUEST THAT STATUTORILY MANDATED NOTICES, SCHEDULES, OR FORMULAS BE FILED WITH THE BOARD (VEHICLE CODE SECTIONS 3064, 3065, AND 11713.3(O)) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker updating the status of manufacturer compliance with filing statutorily required notices, schedules, or formulas. Ms. Parker provided an overview of the number of manufacturers and distributors that have complied with the Board’s request for information. Ms. Parker reported that as of September 5, 2001, 23 licensees had responded out of 125. There was a consensus among the members that future letters should be stronger. Mr. Skobin requested that future letters more accurately reflect the two functions of the Board (quasi-judicial and appellate). Mr. Flesh requested that this matter be updated at the November meeting.

6. **CONSIDERATION OF A REVISED DOCUMENT REQUEST POLICY - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning a revised document request policy. Ms. Parker explained the revised policy and answered member questions. It was recommended that the Board charge fees for document requests that are consistent with Evidence Code section 1563, and that all fees for document requests that total \$6.00 or less be waived by the Board. It was suggested that fees be waived subject to review and approval by the Executive Director. Mrs. Brogin moved to adopt the recommendation as amended. Mr. Hitchcock seconded the motion. The motion carried unanimously. Mr. Flesh requested that the staff update the members concerning the effect of the new policy in September 2002.

7. **CONSIDERATION OF MAKING ELECTRONIC-MAILING LIST PERMANENT - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Michael Dingwell,

former Staff Counsel. Mr. Novi provided an overview of the Board's electronic mail pilot project. The following recommendation was considered: (1) that the Electronic Public Mailing List ("EPML") be made permanent; (2) that volunteer recipients be notified that no disruption in e-mail notification will occur at the end of September and be given the option to discontinue receiving dual notification via U.S. Postal Service mail; (3) that when the Board disseminates its annual Public Mailing List ("PML") information update letters, recipients will be offered the ability to receive notification of Board action via e-mail and/or U.S. Postal Service mail, and (4) when a new request to be added to the PML is received, the individual or entity will be given the option of e-mail and/or U.S. Postal Service mail notification. Mr. Novi indicated that the Board staff would provide an annual update concerning its EPML. It was suggested that all Board members and staff be added to the EPML. Mrs. Brogin moved to adopt the recommendation as amended. Mr. Soteras seconded the motion. The motion carried unanimously.

8. **CONSIDERATION OF ADDING A STAFF COUNSEL III (SPECIALIST)
POSITION TO THE LEGAL AND CASE MANAGEMENT DIVISION -
ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning adding a Staff Counsel III (Specialist) position to the Legal and Case Management Division. The members were also provided with a duty statement. Mr. Novi provided an overview of the need for the position since the Executive Director is not an attorney. Mr. Novi indicated that the Board would administer an examination only for New Motor Vehicle Board employees. Only one candidate was qualified, Robin Parker, and it was noted that she has been performing the duties in the recent past. Mrs. Brogin commented that the candidate should be compensated for working out-of-class. It was recommended that an existing vacant position be reclassified to Staff Counsel III (Specialist), and a promotional examination be requested in order to fill the position. Mr. Stevens moved to adopt the recommendation. Mr. Soteras seconded the motion. The motion carried unanimously. Mrs. Brogin suggested that Robin Parker be formally recognized as working out-of-class and be appointed as Acting Senior Staff Counsel until a determination by examination. Mr. Skobin moved to appoint Robin Parker to serve in the interim as Acting Senior Staff Counsel and to make the appointment retroactive to June 1, 2001. Mr. Soteras seconded the motion. The motion carried unanimously.

9. **STATUS REPORT CONCERNING COLLECTION OF THE DATA
NECESSARY TO CALCULATE THE ANNUAL BOARD FEE (13 CCR § 553.10)
- FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the data summary status report. Mr. Novi reported that on June 5, 2001, staff mailed the Data Summary Form to 125 manufacturers and distributors for purposes of ascertaining the number of new motor vehicles sold to California consumers in calendar

year 2000. As of August 15, 2001, 79 responses were received. Mr. Flesh commented that this was a poor response and requested that staff report at the next meeting what it can do to get compliance from manufacturers.

10. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION THROUGH THE 4TH QUARTER OF FISCAL YEAR 2000-2001 - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi, Dawn Kindel, and Linda Lighter concerning the Board's financial condition through the fourth quarter of fiscal year 2000-2001. Mr. Novi reported that the Board's expenditures were 76% of its allocated budget.

11. **STATUS REPORT ON NEW MOTOR VEHICLE BOARD DISPUTE RESOLUTION, A GUIDE FOR ADMINISTRATIVE LAW JUDGES AND OTHERS WHICH MAY BE USED IN PREPARING ORDERS, PROPOSED DECISIONS/RULINGS, CASE SUMMARIES, AND THE LIKE - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a draft version of *New Motor Vehicle Board Dispute Resolution, a Guide for Administrative Law Judges and Others*, prepared by Kenneth Wilson, Administrative Law Judge. Mr. Novi indicated that the *Guide* was a draft and sought Board member input. At the November 2001, meeting, the members will be provided with a final version of the *Guide*. Mrs. Brogin commented that the acknowledgment page contained in the *Guide* was inappropriate. Mr. Hitchcock suggested that the acknowledgment page be taken out. Mr. Novi indicated that the pleasure of the Board members would be reflected in the final version considered at the next meeting.

12. **CONSIDERATION OF UPDATED GUIDE TO THE NEW MOTOR VEHICLE BOARD - POLICY AND PROCEDURE COMMITTEE**

The members were provided with an updated *Guide to the New Motor Vehicle Board*. Mr. Skobin suggested that staff review declaratory decisions which are contained in the *Guide for Administrative Law Judges and Others* and consider whether it should be included in this *Guide*. Mr. Stevens moved to approve the *Guide to the New Motor Vehicle Board* subject to Board staff review of declaratory decisions and expedited motions to see if adequately covered. Mr. Hitchcock seconded the motion. The motion carried unanimously.

13. **CONSIDERATION OF MANUFACTURER REQUESTS FOR WAIVER OF THE ANNUAL BOARD FEE - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning nine (9) letters requesting a waiver of the Board's annual fee because the manufacturer or distributor does not have a dealer network or the product is outside the scope of the Board's jurisdiction. It was recommended that the Board waive the annual fee for a total of twenty-eight (28) manufacturers and distributors without a dealer network in California. It was also recommended that the Board promulgate regulations in 2002 to ratify the Board's decision in this regard. Just because the Board waives the annual fee, it does not mean that the Board cannot assert jurisdiction. The fiscal impact of this proposal is approximately \$8,400. Mr. Stevens moved that a manufacturer or distributor of motor vehicles (including motorcycles) within the purview of the Board's jurisdiction who does not have dealers in California or does not sell vehicles in California is exempt from collection of the annual Board fee. Mr. Skobin seconded the motion. The motion carried unanimously.

14. **CONSIDERATION OF AN INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with an *Informational Guide for Manufacturers and Distributors* that was prepared to assist manufacturers and distributors in complying with California's vehicle franchise laws with respect to notices, schedules, and formulas. Ms. Parker indicated that the staff was working on creating a tailored mailing list for all manufacturers and distributors who issue the notices, schedules, and formulas. Mr. Hitchcock moved to adopt the *Informational Guide*. Mrs. Brogin seconded the motion. The motion carried unanimously.

15. **STATUS REPORT ON WHETHER THE ONE-YEAR PERIOD FOR TEMPORARY FACTORY OWNERSHIP OR OPERATION OF A DEALERSHIP WITHIN THE RELEVANT MARKET AREA OF A DEALER OF THE SAME LINE-MAKE COMMENCES WHEN THE OWNERSHIP OCCURRED EVEN IF THAT WAS PRIOR TO THE EFFECTIVE DATE OF THE STATUTE OR ON OR AFTER JANUARY 1, 2001 - POLICY AND PROCEDURE COMMITTEE**

Ms. Parker provided a verbal report concerning Mr. Stevens' request that the Board staff seek a Legislative Counsel opinion concerning whether the one-year period for temporary factory ownership or operation of a dealership within the relevant market area of a dealer of the same line-make commences when the ownership occurred even if that was prior to the effective date of the statute or on or after January 1, 2001. Ms. Parker indicated that she had made several telephonic contacts to Senator Dunn's office and requested

clarification in writing concerning the Legislative intent. Given the time factor, no further clarification would be sought from Senator Dunn as this issue was becoming moot.

16. **DISCUSSION CONCERNING PENDING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

a. **Bills that impact the Board.**

- (1) Senate Bill 774.
- (2) House of Representatives Bill 1296.

b. **Bills of general interest.**

- (1) Senate Bill 91.
- (2) Senate Bill 481.

The members were provided with a memorandum from Tom Novi and Robin Parker summarizing the pending legislation that impacts the Board and bills of general interest. The summary analyzed the current law, the proposed legislation, and the impact on the Board. Ms. Parker informed the members that Senate Bill 774 (Senator Margett) and Senate Bill 91 (Senator Figueroa) are two-year bills. Ms. Parker indicated that Senate Bill 734 (Senator Karnette) was of interest because it impacts several definitions in the Vehicle Code and an analysis will be provided at the next meeting.

17. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code Sections 3060 and 3062.
- g. Other.

Mr. Novi provided the members with a Report on Administrative Matters which identified all pending projects, the Board manager and committee assigned, estimated completion date, and status.

The members were also provided with a copy of the Executive Director's Report.

The members were provided with a California Motor Car Dealers Association ("CMCDA") calendar and encouraged to attend the Field and Roundtable Meetings. Mr. Soteras indicated that he would attend the Roundtable Meeting on September 20, 2001, in San Diego. Mr. Wilson indicated that he too would try to attend that meeting. Mr. Skobin and

Mrs. Brogin indicated that they would try to attend the November 15, 2001, Field Meeting in Universal City. Mr. Soteras was informed that the Field Meeting he had agreed to attend on December 6, 2001, had changed to December 4, 2001, in Sacramento. Mr. Hitchcock indicated that he would attend the January 17, 2002, Roundtable Meeting in Cerritos. Messrs. Flesh and Hitchcock will try to attend the February 21, 2002, Field Meeting in San Jose. Messrs. Flesh and Stevens will try to attend the March 21, 2002, Field Meeting in San Luis Obispo. Board staff will also attend these meetings.

18. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), the Board shall convene in a closed Executive Session.

Consideration of the General Counsel nominee - Executive Committee

The members of the Board convened in closed Executive Session to discuss the General Counsel nominee. The members appointed Alan Skobin and Glenn Stevens to serve on an ad hoc committee for purposes of interviewing two final candidates for the General Counsel position. A Special Board meeting will be held on September 25, 2001, in Los Angeles for purposes of the full Board interviewing the candidates.

19. **OPEN SESSION**

After the conclusion of closed Executive Session, the members went back into open session.

20. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at 11:27 a.m.

Submitted by

TOM NOVI
Executive Director

APPROVED: _____
Robert T. (Tom) Flesh
President
New Motor Vehicle Board